

AMENDED IN ASSEMBLY JUNE 3, 2009

AMENDED IN SENATE MARCH 16, 2009

SENATE BILL

No. 45

Introduced by Senator Padilla

January 7, 2009

An act to amend Section 1777.1 of the Labor Code, relating to prevailing wage.

LEGISLATIVE COUNSEL'S DIGEST

SB 45, as amended, Padilla. Public works: payment of prevailing wage: violations.

Existing law generally requires the payment of the general prevailing rate of per diem wages to workers employed on public works projects. Under existing law, whenever a contractor or subcontractor performing a public works project is found by the Labor Commissioner to be either in violation of certain provisions of law, with intent to defraud, or in willful violation of those provisions of law, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible to bid on or to receive a public works contract for specified periods of time.

This bill would ~~instead~~ provide that a contractor or subcontractor performing a public works project who is found by the Labor Commissioner to be in willful violation of the public works law *a second and subsequent time*, or to be in violation of this law with intent to defraud *a second and subsequent time*, with a prescribed exception related to apprenticeship requirements, shall be ineligible to bid on or to receive a public works contract.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1777.1 of the Labor Code is amended to
2 read:
3 1777.1. (a) *(1) Whenever a contractor or subcontractor*
4 *performing a public works project pursuant to this chapter is found*
5 *by the Labor Commissioner to be in violation of this chapter with*
6 *intent to defraud, except Section 1777.5, the contractor or*
7 *subcontractor or a firm, corporation, partnership, or association in*
8 *which the contractor or subcontractor has any interest is ineligible*
9 *for a period of not less than one year or more than three years to*
10 *do either of the following:*
11 ~~(1)~~
12 (A) Bid on or be awarded a contract for a public works project.
13 ~~(2)~~
14 (B) Perform work as a subcontractor on a public works project.
15 (2) *Whenever a contractor or subcontractor performing a public*
16 *works project pursuant to this chapter is found by the Labor*
17 *Commissioner to be in violation of this chapter with intent to*
18 *defraud, except Section 1777.5, for a second and subsequent time,*
19 *the contractor or subcontractor or a firm, corporation, partnership,*
20 *or association in which the contractor or subcontractor has any*
21 *interest is ineligible to do either of the following:*
22 (A) *Bid on or be awarded a contract for a public works project.*
23 (B) *Perform work as a subcontractor on a public works project.*
24 (b) *(1) Whenever a contractor or subcontractor performing a*
25 *public works project pursuant to this chapter is found by the Labor*
26 *Commissioner to be in willful violation of this chapter, except*
27 *Section 1777.5, the contractor or subcontractor or a firm,*
28 *corporation, partnership, or association in which the contractor or*
29 *subcontractor has any interest is ineligible for a period of not less*
30 *than one year or more than three years to do either of the*
31 *following:*
32 ~~(1)~~
33 (A) Bid on or be awarded a contract for a public works project.
34 ~~(2)~~
35 (B) Perform work as a subcontractor on a public works project.

1 (2) *Whenever a contractor or subcontractor performing a public*
2 *works project pursuant to this chapter is found by the Labor*
3 *Commissioner to be in willful violation of this chapter, except*
4 *Section 1777.5, for a second and subsequent violation, the*
5 *contractor or subcontractor or a firm, corporation, partnership,*
6 *or association in which the contractor or subcontractor has any*
7 *interest is ineligible to do either of the following:*

8 (A) *Bid on or be awarded a contract for a public works project.*

9 (B) *Perform work as a subcontractor on a public works project.*

10 (c) A willful violation occurs when the contractor or
11 subcontractor knew or reasonably should have known of his or
12 her obligations under the public works law and deliberately fails
13 or refuses to comply with its provisions.

14 (d) Not less than semiannually, the Labor Commissioner shall
15 publish and distribute to awarding bodies a list of contractors who
16 are ineligible to bid on or be awarded a public works contract, or
17 to perform work as a subcontractor on a public works project
18 pursuant to this chapter. The list shall contain the name of the
19 ~~contractor and~~ contractor; the Contractor's State License Board
20 license number of the *contractor*; and the *effective period of*
21 *debarment of the* contractor. The commissioner shall also place
22 advertisements in construction industry publications targeted to
23 the contractors and subcontractors, chosen by the commissioner,
24 that state *the effective period of the debarment and* the reason for
25 debarment. The advertisements shall appear one time for each
26 debarment of a contractor in each publication chosen by the
27 commissioner. The debarred contractor or subcontractor shall be
28 liable to the commissioner for the reasonable cost of the
29 advertisements, not to exceed five thousand dollars (\$5,000). The
30 amount paid to the commissioner for the advertisements shall be
31 credited against the contractor's or subcontractor's obligation to
32 pay civil fines or penalties for the same willful violation of this
33 chapter.

34 (e) For purposes of this section, "contractor or subcontractor"
35 means a firm, corporation, partnership, or association and its
36 responsible managing officer, as well as any supervisors, managers,
37 and officers found by the Labor Commissioner to be personally
38 and substantially responsible for the willful violation of this
39 chapter.

- 1 (f) For the purposes of this section, the term “any interest” means
2 an interest in the entity bidding or performing work on the public
3 works project, whether as an owner, partner, officer, manager,
4 employee, agent, consultant, or representative. “Any interest”
5 includes, but is not limited to, all instances where the debarred
6 contractor or subcontractor receives payments, whether cash or
7 any other form of compensation, from any entity bidding or
8 performing work on the public works project, or enters into any
9 contracts or agreements with the entity bidding or performing work
10 on the public works project for services performed or to be
11 performed for contracts that have been or will be assigned or sublet,
12 or for vehicles, tools, equipment, or supplies that have been or will
13 be sold, rented, or leased during the period from the initiation of
14 the debarment proceedings until the end of the term of the
15 debarment period. “Any interest” does not include shares held in
16 a publicly traded corporation if the shares were not received as
17 compensation after the initiation of debarment from an entity
18 bidding or performing work on a public works project.
- 19 (g) For the purposes of this section, the term “entity” is defined
20 as a company, limited liability company, association, partnership,
21 sole proprietorship, limited liability partnership, corporation,
22 business trust, or other organization.
- 23 (h) The Labor Commissioner shall adopt rules and regulations
24 for the administration and enforcement of this section.